IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/10/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION No.8623 OF 1997

1. Rajalakshmi
2. Selvarani ... Petitioners

-Vs-

1. The Presiding Officer,
Labour Court,
Coimbatore.

2. The Management,
Sivasakthi Estate,
Gudalur,
Nilgiris. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for the relief as stated therein.

For petitioners : Mr.P.K.Rajagopal

For respondents : No appearance

:O R D E R
The above Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the common award of the first respondent Labour Court dated 25.7.1996 made in I.D.Nos.314 and 315 of 1993 and quash the same to the extent it treats the petitioners as temporary workers and denies them backwages and attendant benefits and direct the second respondent to continue the petitioners as permanent tea pluckers in Sivasakthi Estate, Gudalur, Nilgiris and pay them backwages from the date of their non-employment on 6.6.1992 till the date of their re-instatement as Tea Pluckers.

2. On 21.9.2004, when the above matter has been taken up for consideration in the presence of the learned counsel for the petitioners, there was no representation offered on the part of the respondents particularly on the part of the contesting second respondent. Therefore, this Court is left with no option but to reserve the orders upon hearing the learned counsel for the petitioners for appreciation of the same in the light of the materials placed on record.

3. In the affidavit filed in support of the above writ petition, the first petitioner swearing on her behalf and also on behalf of the second petitioner, would submit that she was working under the second respondent Management from 1981 onwards as Tea Plucker as a permanent worker and the second petitioner was working as such from 1.10.1984; that the second respondent/management was not in the habit of maintaining registers pertaining to permanent and casual labourers as required under Section 3-b(1) of the Plantation Labour Act; that the benefits provided under the said Act for the workers were denied by the second respondent and hence the petitioners made complaints against the second respondent when the Plantation Labour Inspector visited the second respondent's Estate as a result of which the petitioners were denied employment from 6.6.1992 by the second respondent without any notice and in spite of their representation to the second respondent dated 7.6.1992 thereby demanding the employment as usual, no fruitful reply came forth and hence they have raised industrial disputes before the Labour Court in I.D.Nos.314 and 315 of 1993 and the Labour Court by its common Award dated 25.7.1996 directed the second respondent Management to employ the petitioners as temporary workers without backwages. Aggrieved against such a finding of the Labour Court, the petitioners have come forward to file the above writ petition.

4. The plea of the second respondent before the Labour Court in both the industrial disputes raised by the employees is that they have no lien on employment; that the petitioners have not worked as permanent workers in their estate; that the petitioners are purely casual workers in the estate on a day-to-day basis as and when such casual work was available during the year 1991; that the casual work of the petitioners has been confined only for about one year from June 1991 to June 1992 that too for about 10 to 20 days in each month, depending upon the casual work available; that the casual workers were paid wages on day-to-day basis depending upon the exigencies of the work and there is no permanency involved at all in the employment of the petitioners; that the petitioners could not be given work since the casual work was not available after June, 1992 and that the Management is not under any obligation to grant employment since there is no contract of employment between the petitioners and the respondent Management.

5. The second respondent/Management would further submit that the allegation of the petitioners that they are working as permanent employees and that they were dismissed from service are totally false. The second respondent/management would further submit that the first petitioner Rajalakshmi's husband by name Sathyamoorthy was employed as cattle watchman with the respondent Management and he was allotted quarters in the Estate and thereafter he was employed as a permanent worker in Chambala Tea Factory, Gudalur but he continues to reside in the respondent's quarters without vacating the same in spite of demands and the first petitioner Rajalakshmi who is residing with her husband in the said quarters has taken advantage of this fact to file the present claim, styling herself as a permanent worker.

6. In consideration of all the facts and circumstances, the Labour Court would conduct an enquiry in both the matters and would deliver a Common Award thereby directing the second respondent to employ the petitioners as

temporary workers without backwages. Aggrieved against this part of the Award, both the petitioners/workers have come forward to file the present writ petition.

7. The petitioners would submit in the affidavit filed in support of the above writ petition that the award of the Labour Court is on a misconception of the facts and the law; that the Labour Court has failed to look into the fact that the petitioners were permanent employees and that no notice was served on them before removal from service; that the second respondent has failed to submit records pertaining to the years 1981 to 1987 which are the basic documents to know that the petitioners were permanent employees; that the first respondent has failed to consider Ex.W3, the report of the Inspector (in-charge) of the Plantation Department, Gudalur dated 2.2.1987 which clearly shows that the second respondent was not in the habit of maintaining registers pertaining to the workmen in Sivasakthi Estate; that on the other hand, the first respondent on an erroneous consideration of the non-filing of registers as documents by the Management, came to the conclusion that these two employees were casual labourers and not permanent employees; that the first respondent has failed to see the fact that as per Management's counter, the first petitioner's husband Sathiamurthy is the brother of the second petitioner and that both the petitioners lived with him as he was an employee of the second respondent then and owing to this, they were working under the second respondent from the date of employment of Sathiamurthy, but the second respondent has failed to submit records pertaining to the services of Sathiamurthi nor to disclose it in its counter and hence the first respondent came to the conclusion that these two petitioners were casual labourers which is erroneous.

8. The petitioners would further submit that the first respondent has failed to see that the Management's witness was the one who does not have any knowledge about the workmen between 1981 and 1987; that moreover, the second respondent has refused to reemploy the petitioners as tea pluckers as per the award and when the petitioners approached the second respondent, they were asked to clean the toilets and were not allowed to work as tea pluckers and this is arbitrary and violative of principles of natural justice; that it is perverse on the part of the Labour Court to draw adverse inference against the petitioners for non-production of records by the Management, which are in the custody of the Management so as to hold the petitioners as not permanent workers. On such grounds, the petitioners would pray for the relief extracted supra.

9. During arguments, the learned counsel for the petitioners would reiterate the grounds pleaded in the affidavit filed in support of the above writ petition with no new fact or law being pleaded. Hence, tracing the same would only be a time consuming affair.

10. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioners with no representation made on the part of the respondents, what comes to be known is that the petitioners claimed that they have been working under the second respondent Management from the year 1981 and 1984

respectively as tea-pluckers on the permanent worker basis and since the second respondent Management was not in the habit of maintaining the registers pertaining to the permanent and casual labourers as required under Section 3-b(1) of the Plantation Labour Act thereby denying the benefits provided under the said Act for the workers, the petitioners have complained against the second respondent during the time that the Plantation Labour Inspector visited the Estate as a result of which acting in a vindictive manner, they both were denied employment from 6.6.1992 onwards without any order or notice and in spite of their many representations particularly dated 7.6.1992 , no reply came forth and hence they raised the Industrial Disputes before the Labour Court in I.D.Nos.314 and 315 of 1993 and by its common Award dated 25.7.1996, the Labour Court has directed the second respondent Management to employ the petitioners as temporary workers without backwages, aggrieved against which the petitioners have come forward to file the above writ petition on such grounds as brought forth in the grounds of writ petition.

11. As per the case argued before the Labour Court, it is admitted on the part of the second respondent that the petitioners were casual workers and because of non-availability of labour for casual workers, there is no permanency involved in the employment of the petitioners at all and therefore the Management is not under obligation to grant employment to the petitioners since there is no contract of employment between the petitioners and the respondent Management. The second respondent would further rake-up yet another point as an off-shoot of the main issue that the first petitioner occupying the quarters allotted to her husband, is indulging in such activities of filing the claim application posing to be a permanent worker. However, this allegation does not have any bearing so far as it is concerned with the second petitioner.

12. The Labour Court, Coimbatore, would frame its own point for consideration to the effect 'whether the first petitioner from the year 1 981 and the second petitioner from 1.10.1984 onwards have been working as permanent employees in the second respondent/Management and whether they have been terminated from service without any enquiry or reason assigned thus abruptly refusing to entertain them as workers respectively from 14.6.1992 and 6.6.1992 and whether such an act perpetrated on the part of the second respondent Management is sustainable in law?'
13. Thereupon, the Labour Court would conduct enquiry wherein so far as the case put up by the first petitioner herein is concerned, she would examine herself as W.W.1 and on the part of the Management, they would examine one witness for oral evidence as M.W.1 and for documentary evidence, the first petitioner herein would mark three documents as Exs.W1 to W3. On the part of the second respondent/Management, two documents would be marked as Exs.M1 and M2. So far as the second petitioner's case in I.D.No.315 of 1993 is

concerned, she would also examine herself as M.W.1 and would mark three documents as Exs.M1 to M3 whereas on the part of the Management, no oral or documentary evidence would be adduced.

14. The Labour Court, in full consideration of all these materials

placed on record and having its own discussions on such evidence placed on record and upon hearing the learned counsel for both, would find that no sufficient materials have been placed on record on the part of the Management in order to prove that the petitioners have not been serving in their Management as it is claimed on their part; that in confirmation of the arguments put up on the part of the Management that the petitioners were working only from June 1991 to June 1992 as casual labourers, no evidence has been placed before the Labour Court; that even those documents placed on record so far as it is concerned with the first petitioner in her case as Exs.M.1 and M.2, it comes to be proved that both the petitioners have been engaged in the work of the second respondent Management for 13 months and since they have worked for 240 days, the Management should have initiated measures under Section 25-F of the I.D.Act, but without any such measures taken, as it is required under law and without any enquiry having been held nor any order passed, abruptly, the petitioners have been stopped from their employment by oral communication and therefore the petitioners have been unreasonably sacked even from the employment that they have been engaged as per the admitted facts of the second respondent are concerned.

15. All these factors considered by the Labour Court are quite against the second respondent Management and even though the Labour Court has definitely arrived at the conclusion that the elementary requirements of law have not been followed by the Management and while the Labour Court itself has been finding fault with the Management for having not placed the true material particulars on record so as to arrive at a definite conclusion as to whether the petitioners have been working as casual labourers or permanent hands and while totally disbelieving the version of the Management, instead of granting the relief as per the claim of the petitioners, the Labour Court has jumped to the conclusion to treat them as casual labourers and to direct the Management to admit them as casual labourers but without backwages. For such a conclusion arrived at, absolutely no reason has been assigned on the part of the Labour Court and therefore it is a case wherein based on the admitted facts and conclusions arrived at, the Labour Court should have accepted the case of the petitioners in toto and should have ordered the relief as claimed on their part without curtailing the rights of the petitioners in the relief column for no reason assigned and therefore, this Court is of the view that even according to the case that came to be proved before the Labour Court, the petitioners are fully entitled to the relief sought for in its entirety and the Labour Court in not granting the same but only allowing the part of it dubbing them as casual labourers, has committed grave errors in its Award.

16. Further more, on a overall consideration of the facts that are prevalent in the whole of the case, it further comes to be established that termination of the petitioners from service is vindictive and it would only indicate the unfair labour practice adopted on the part of the second respondent Management particularly against the petitioners since they complained to the Plantation Labour Inspector about the laxities that are prevalent in the administration so far as it is concerned with the welfare of the workmen of the second respondent Management. Therefore it has become necessary on the part of this Court to cause its interference into the Common Award passed by the Labour Court in I.D.Nos.314 and 315 of 1993 dated

25.7.1996, allowing the above Writ Petition in full as it is prayed for and hence the following order:

In result,
(i) the above writ petition is allowed.
(ii) The second respondent Management is directed to reinstate the petitioners as permanent employees in their capacities as Tea-pluckers and pay them their backwages from the date of their non-employment i.e. from 14.6.1992 and 6.6.1992 respectively, within fifteen days from the date on which a copy of this order is made ready and report compliance to this Court.

(iii) The common Award dated 25.7.1996 made in I.D.Nos.314 and 315 of 1993 by the Labour Court, Coimbatore is modified to the above extent.

However, in the circumstances of the case, there shall be no order as to costs.

Index: Yes
Internet: Yes

Rao

To

The Presiding Officer,
Labour Court,
Coimbatore.